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5 Attorney for Plaintiffs  
United States of America and AAA  
6 Restaurant Fire Protection Services, Inc.

7  
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, for the )  
11 use of AAA RESTAURANT FIRE )  
CONTROL, INC., doing business as AAA )  
12 FIRE PROTECTION SERVICES; and AAA )  
RESTAURANT FIRE CONTROL, INC., )

13 Plaintiffs, )  
14 )

15 vs. )  
16 )

17 YERBA BUENA ENGINEERING & )  
CONSTRUCTION, INC., a California )  
18 corporation; TRAVELERS CASUALTY )  
AND SURETY COMPANY OF AMERICA, )  
a Connecticut corporation; and )  
DOES 1 TO 100, inclusive, )

19 Defendants. )  
20 )

21 AND RELATED COUNTERCLAIM )  
22 )

Case No.: C07-5912 WDB

**ANSWER TO COUNTERCLAIM OF  
YERBA BUENA ENGINEERING  
AND CONSTRUCTION, INC.**

23 Plaintiff and Counterdefendant AAA RESTAURANT FIRE CONTROL, INC.,  
24 doing business as AAA FIRE PROTECTION SERVICES ("AAA"), answers the Counterclaim

ANSWER TO COUNTERCLAIM OF YERBA BUENA ENGINEERING AND CONSTRUCTION, INC.

1 of defendant and counterclaimant YERBA BUENA ENGINEERING & CONSTRUCTION,  
2 INC. ("Yerba Buena") as follows:

3 1. AAA lacks information or belief sufficient to admit or deny the allegations  
4 of paragraph 1 of the Counterclaim and on that basis, denies those allegations.

5 2. AAA admits the allegations of paragraph 2 of the Counterclaim.

6 3. AAA admits the allegations of paragraph 3 of the Counterclaim.

7 4. AAA admits the allegations of paragraph 4 of the Counterclaim.

8 5. AAA admits that the Subcontract incorporates by reference various other  
9 documents and drawings and that such documents and drawings are voluminous, but lacks  
10 sufficient information or belief to admit or deny that the materials that paragraph 5 of the  
11 Counterclaim purports to incorporate are part of the Subcontract and on that basis, denies that  
12 such documents and drawings are contained in the Subcontract.

13 FIRST CAUSE OF ACTION

14 6. In response to paragraph 6 of the Counterclaim, AAA incorporates here by  
15 reference AAA's responses set forth in paragraphs 1 through 5, inclusive, of this Answer To  
16 Counterclaim.

17 7. AAA denies the allegations contained in paragraph 7 of the Counterclaim.

18 8. AAA denies the allegations contained in paragraph 8 of the Counterclaim,  
19 and specifically denies that Yerba Buena has been damaged in any manner or amount at all as a  
20 consequence of acts or omissions of AAA.

21 9. AAA denies the allegations contained in paragraph 9 of the Counterclaim.

22 10. AAA admits the allegations contained in paragraph 10 of the  
23 Counterclaim.  
24

1                   11. AA denies that any attorneys fees and other expenses in this proceeding  
2 arise from any act or omission of AAA. Except as so denied, AAA lacks information or belief  
3 sufficient to admit or deny the allegations of paragraph 11 of the Counterclaim and on that basis,  
4 denies those allegations.

5                                   SECOND CAUSE OF ACTION

6                   12. In response to paragraph 12 of the Counterclaim, AAA incorporates here  
7 by reference AAA's responses set forth in paragraphs 1 through 11, inclusive, of this Answer To  
8 Counterclaim.

9                   13. AAA denies the allegations of paragraph 13 of the Counterclaim.

10                  14. AAA denies the allegations of paragraph 14 of the Counterclaim.

11                  15. AAA denies the allegations contained in paragraph 15 of the  
12 Counterclaim, and specifically denies that Yerba Buena has been damaged in any manner or  
13 amount at all as a consequence of acts or omissions of AAA.

14                                   AFFIRMATIVE DEFENSES

15                  16. The Counterclaim fails to state a claim upon which relief may be granted.

16                  17. Yerba Buena's own negligence, and that of its employees, agents and  
17 subcontractors other than AAA, contributed to the damages alleged in the Counterclaim.

18                  18. The Counterclaim is barred by Yerba Buena's laches.

19                  19. Yerba Buena is estopped by Yerba Buena's own acts and omissions from  
20 recovery on the counterclaim.

21                  20. Yerba Buena's damages, if any, were caused in part or in whole by  
22 persons and entities other than AAA.

1                   21.     The Counterclaim is barred by the provisions of Section 337, subdivision  
2     1; Section 338, subdivisions (b) and (c); and Section 339, subdivision 1, of the California Code  
3     of Civil Procedure.

4                   22.     Yerba Buena failed to mitigate its damages alleged in the Counterclaim.

5                   23.     Yerba Beuna failed to fulfill or cause the fulfillment of conditions  
6     precedent or concurrent to performance by AAA.

7                   WHEREFORE, plaintiff AAA requests judgment be entered denying Yerba Buena any  
8     recovery on its Counterclaim and awarding AAA its attorneys fees and costs of suit.

9  
10     Dated:

\_\_\_\_\_  
11     Lawrence E. Smith  
12     Attorney for United States Of America, for the use of AAA  
13     Restaurant Fire Control, Inc., and AAA Restaurant Fire  
14     Control, Inc.